

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
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BROOKLYN OFFICE

ORIGINAL

08F
C/M

KELLY SONDEY,

Plaintiff,

-against-

COMMERCIAL RECOVERY
SYSTEMS, INC.,

Defendant.

MEMORANDUM AND ORDER

Case No. 08-CV-4856 (FB) (JO)

Appearances:

For the Plaintiff:

SERGEI LEMBERG, ESQ.
Lemberg & Associates L.L.C.
1100 Summer Street, Floor 3
Stamford, CT 06905

BLOCK, Senior District Judge:

On May 5, 2009, Magistrate Judge Orenstein issued a Report and Recommendation ("R&R") recommending that this action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) because the plaintiff has failed to prosecute this case. *See* R&R at 3. The R&R also stated that failure to object within ten days would preclude appellate review. *See id.* at 3-4. According to the docket, plaintiff's attorney was notified electronically of the filing of the R&R on May 5, 2009; no objections have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court

will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error, *see Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); no such error appears here. Accordingly, the Court adopts the R&R without *de novo* review and directs the Clerk to dismiss this action in accordance with the R&R.

SO ORDERED.

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s/FB


FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
August 5, 2009